IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	2 CA-CR 2006-0025
Appellee,	)	DEPARTMENT B
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
CESAR LOPEZ,	)	Rule 111, Rules of
	)	the Supreme Court
Appellant.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20042264

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Diane Leigh Hunt
Tucson
Attorneys for Appellee

Robert J. Hooker, Pima County Public Defender
By M. Edith Cunningham
Tucson
Attorneys for Appellant

E S P I N O S A, Judge.

¶1 After a jury trial, Cesar Lopez was convicted of attempted first-degree murder and aggravated assault, both dangerous nature offenses; fleeing from a law enforcement vehicle; two counts of child abuse; and two counts of misdemeanor assault. The court sentenced Lopez to presumptive, concurrent terms of imprisonment totaling 10.5 years. Lopez appeals from his convictions and sentences.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing she has reviewed the entire record but has found no meritorious issue to raise on appeal. Counsel nevertheless calls attention to an alleged constitutional error in the reasonable doubt instruction our supreme court adopted in *State v. Portillo*, 182 Ariz. 592, 596, 898 P.2d 970, 974 (1995), as an "arguably meritorious issue." As counsel acknowledges, our supreme court "has repeatedly rejected similar challenges to the *Portillo* instruction." *See, e.g., State v. Ellison*, 213 Ariz. 116, ¶ 63, 140 P.3d 899, 916 (2006); *State v. Dann*, 205 Ariz. 557, ¶ 74, 74 P.3d 231, 249-50 (2003). We are bound by these decisions. *See City of Phoenix v. Leroy's Liquors, Inc.*, 177 Ariz. 375, 378, 868 P.2d 958, 961 (App. 1993) (court of appeals has "no authority to overrule, modify, or disregard" supreme court decisions). Counsel has complied with the requirements of *Clark* by "setting forth a detailed factual and procedural history of the case with citations to the record, [so that] this court can satisfy itself that counsel has in fact thoroughly reviewed the record," *id.* ¶ 32, and asks us to search the record for error. Lopez has not filed a supplemental brief.

¶3 Pursuant to our obligation under *Anders*, we have reviewed the record in its entirety, viewing the evidence in the light most favorable to upholding the verdicts. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). Testimony at trial established that Lopez attacked his wife, Geraldine, in a hallway of the residential care center where she was employed, stabbing and beating her while co-workers attempted to come to her aid. During the incident, Lopez swung at two of her co-workers, verbally threatening one of them. After Geraldine was removed to safety, Lopez drove away from the

facility, taking the couple's two children with him. Lopez's vehicle was later located and pursued by a police vehicle that had its lights and sirens activated, but Lopez did not stop, and at one point during the pursuit, drove over a median barrier. He was observed to be hugging his young daughter as he drove, and neither child appeared to be wearing a seat belt. Geraldine was diagnosed with a facial bone fracture and multiple stab wounds as a result of the offense.

¶4 There was substantial evidence to support the jury's verdicts convicting Lopez of attempted first-degree murder and aggravated assault, both dangerous nature offenses, against Geraldine, *see* A.R.S. §§ 13-1001, 13-1105, 13-1204; fleeing from a law enforcement vehicle, *see* A.R.S. § 28-622.01; child abuse of Lopez's children, *see* A.R.S. § 13-3623; and misdemeanor assaults against Geraldine's co-workers, *see* A.R.S. § 13-1203. Furthermore, the trial court's presumptive and concurrent sentences were within the ranges authorized by statute. *See* A.R.S. §§ 13-603, 13-604.

¶5 During our review of the record, we ordered supplemental briefing by the state on whether the trial court had erred by amending its sentencing minute entry outside Lopez's presence to provide that thirty percent of any compensation he received while in prison "be appropriated and disbursed for court-ordered restitution," even though the court had not made any express findings about restitution at Lopez's sentencing hearing. *See* Ariz. R. Crim. P. 26.9, 17 A.R.S. ("defendant . . . shall be present at sentencing"); *State v. Lewus*, 170 Ariz. 412, 414, 825 P.2d 471, 473 (App. 1992) (error to impose restitution by order outside of defendant's presence). After consideration of the state's brief, we conclude the court's direction at sentencing that Lopez pay $629 to the Pima County crime victim

compensation fund was, in effect, a restitution order. Lopez did not object to this order, and the amount is generally consistent with information found in his presentence report. Because the court's amended minute entry did nothing more than specify that restitution would be collected as required by A.R.S. § 31-254(D)(4), we agree with the state that no fundamental error occurred. *See State v. Davis*, 105 Ariz. 498, 502, 467 P.2d 743, 747 (1970) ("mere irregularity which does not affect substantial rights of a defendant is not grounds for setting a sentence aside").

¶6 After a thorough review of the record, we have found no fundamental error. We therefore affirm the convictions and the sentences imposed.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge